



ENVIRONMENTAL PROTECTION AGENCY

[FRL-9808-8]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("CAA"), notice is hereby given of a proposed consent decree, to address a lawsuit filed by Sierra Club in the United States District Court for the District of Columbia: Sierra Club v. Jackson, No. 12-cv-00347 (D. D.C.). On May 24, 2012, Plaintiff filed a second amended complaint alleging that EPA failed to take final action on specific state implementation plan ("SIP") submissions or portions of submissions intended to meet applicable infrastructure SIP requirements of CAA section 110(a)(2) for Colorado, Kansas, Missouri, Montana, New Jersey, New York, North Dakota, and Utah with regard to the 2006 PM_{2.5} National Ambient Air Quality Standard ("NAAQS"). The proposed consent decree establishes new deadlines for EPA to take action on the SIP submissions at issue in the lawsuit.

DATES: Written comments on the proposed consent decree must be received by [insert date 30 days after publication date].

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2013-0359, online at www.regulations.gov (EPA's preferred method); by e-mail to oei.docket@epa.gov; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday

through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Geoffrey L. Wilcox, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-5601; fax number (202) 564-5603; email address: wilcox.geoffrey@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional information about the proposed consent decree.

The proposed consent decree would resolve a lawsuit filed by the Sierra Club seeking to compel the Administrator to take final action under sections 110(k)(2), (3) and/or (4) of the CAA, 42 U.S.C. 7410(k)(2), (3) and/or (4), to approve or disapprove, in whole or in part, specific “infrastructure” SIP submissions for the 2006 PM_{2.5} NAAQS submitted by Colorado, Kansas, Missouri, Montana, New Jersey, New York, North Dakota, and Utah which are identified in Attachment A to the proposed consent decree. By statute, EPA must take action on such a SIP submission within 12 months after EPA determines the submission to be complete, or within 12 months after the submission is deemed complete by operation of law. Because EPA had not taken action on the SIP submissions at issue in this litigation by the statutorily required dates, EPA determined that it was preferable to enter into a consent decree to specify the new date by which EPA would take these actions, rather than have a date imposed by a court.

The proposed consent decree provides that no later than June 13, 2013, EPA shall sign one or more final rules to approve or disapprove, in whole or in part, pursuant to

CAA section 110(k)(2), (3) and/or (4), the specific infrastructure SIP submissions for the 2006 PM_{2.5} NAAQS submitted by Colorado, Kansas, Missouri, Montana, New Jersey, New York, North Dakota, and Utah identified in Attachment A to the proposed consent decree. The proposed consent decree also identifies the specific section 110(a)(2) infrastructure SIP elements that EPA must address in the required action for each state.

Within 15 business days following signature of each final rule described in the proposed consent decree, EPA is also required to send the signed notice to the Office of the Federal Register for review and publication in the Federal Register. After EPA fulfills all of its obligations under the consent decree, the proposed consent decree provides that this case shall be dismissed with prejudice.

The proposed consent decree also states that the consent decree can be modified by the parties, or by the court following a motion by a party and a response thereto. In addition, the parties agree to seek to resolve informally Sierra Club's claim for litigation costs pursuant to 42 U.S.C. 7604(d), but the court would retain jurisdiction to resolve that claim.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional information about commenting on the proposed consent decree.

A. How Can I Get A Copy Of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC- 2013-0359) contains a copy of the proposed consent decree (including Attachment A). The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through www.regulations.gov. You may use the www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search”.

It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at www.regulations.gov without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will

not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the www.regulations.gov website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of

your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through www.regulations.gov, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Lorie J. Schmidt,
Associate General Counsel.

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